

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.8881 of 2000

1. M.Ramachandran
2. G.Venkatesan
3. K.Natarajan
4. G.Srinivasan
5. N.Damodaran
6. K.Manivelu

.. Petitioners

vs.

1. The Director of Employment and Training,
Chennai-600 005.
2. The Principal,
Government Industrial Training Institute,
Abdulapuram, Vellore-10.
3. The Registrar,
Tamilnadu Administrative Tribunal,
Chennai-104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 4.4.2000 made in O.A.No.1367 of 2000 on the file of the third respondent herein and the order of the second respondent dated 16.11.1999 made in Sae.Mu.Aa.No.9038/tha/98 and quash the same.

For petitioners : Mr.T.N.Suresh
For respondents 1 & 2 : Mr.M.Dhandapani, Spl.G.P.

ORDER

(The Order of the court was made by F.M.Ibrahim Kalifulla,J)

The petitioners, six in number, are aggrieved by the order of the Tamil Nadu Administrative Tribunal, dated 4.4.2000 passed in O.A.No.1367 of

2000, confirming the order of the second respondent dated 16.11.1999 passed in Sae.Mu.Aa.No.9038/tha/98.

2. The petitioners were all employed as Watchmen in the second respondent-Institute. They were on duty between 13.11.1998 and 15.11.1998 which were holidays. On 16.11.1998, it was noticed that theft had taken place in the Stores of the second respondent-Institute, in which the following items were found to have been stolen, the value of which was assessed in a sum of Rs.1,47,934/-:-

Sl. No.	Particulars	Quantity	Value
1	Computer (Machine with monitor & Accessories)	1	144251
2	Aluminium wire 1/18	2 coil	310
3	Copper scrap	3.5 kg	525
4	Brass scrap	15.150 kg	2100
5	Padlock (Broken) Monitor	1	100
6	Padlock	1	250
7	38MM Painted D MS lock	2	148
8	Hand Hammer 21 b Allied trade section	2	60
9	M.S. Painted padlock 2.1/2"	2	190
	Total		147934

The authorities found out that thieves had entered the building premises by breaking open the jolly works with large hammer (ചുരുട്ടി) as well as by smashing the door as well as by breaking open the almirahs.

3. It was in the above stated circumstances, all the petitioners were issued with the memo dated 19.11.1998. A criminal complaint was also lodged on 16.11.1998 itself. The petitioners filed their explanation dated 2/3.12.1998, in which the petitioners took a simple stand that they were all on guard duty on the respective dates, namely between 13.11.1998 and 15.11.1998 and that in their duty hours, they did not hear any noise and that they performed their duty expected of them.

4. Not satisfied with the explanation of the petitioners, the second respondent held an oral enquiry. In the enquiry, all the petitioners fully participated and maintained their stand which they made in their explanation dated 2/3.12.1998.

5. The disciplinary authority, on an analysis of the evidence available before him, has noted as under in paragraphs 6 to 8:

"6. இரவு காவலர்களுக்கு பகல் காவலர்களும் தங்களது காவல் பணிகளை சரிவர செய்ததாக கூறியுள்ளனர். இதனை ஏற்றுக்கொள்வதற்கில்லை. காவலர்கள் தங்களது பணிகளை சரிவர செய்திருந்தால் களவு நடக்க வாய்ப்பில்லை. எனவே காவலர்கள் தங்கள் காவல் பணியாள் கடமையை சரிவர செய்ய தவறிவிட்டனர் என்பது தெளிவாகிறது.

7. இதைத் தொழில் பிரிவு கம்பி வலையை உடைத்தபோதும், பணிமனை ஜாலி சம்மட்டியால் உடைத்து எறிந்தபோதும் பண்டகசாலை கதவினை உடைத்தபோதும், பணிமனை கதவுகள் மீது சாத்தி வைக்கப்பட்டிருந்த மரங்கள் அகற்றியபோதும் எவ்வித சப்தமும் தங்களுக்கு கேட்கவில்லை என்று காவலர்கள் கூறியிருப்பதனை ஏற்றுக் கொள்ளமுடியாது. சப்தம் கேட்டிருக்கும் அவர்கள் காவல் பணியினை செய்திருந்தால் சப்தம் கேட்டதும் இவர்கள் மேற்படி இடங்களுக்கு விரைந்து இருக்கலாம் களவை தடுத்திருக்கலாம். எனவே இவர்கள் காவல் பணியில் தொடர்ந்து ஈடுபடவில்லை என்பது தெளிவாகிறது.

8. அந்நியர்கள் இந்நிலைய வளாகத்தினுள் வந்ததையும் இவர்கள் கண்காணிக்கவில்லை. நிலைய கட்டிடங்களுக்கு சேதம் ஏற்படுத்தி கள்வர்கள் உள்ளே நுழைந்து களவாடிய போதும், கள்வர்கள் களவாடிய பொருட்களுடன் நிலைய வளாகத்தை விட்டு வெளியேறியபோதும் காவலர்கள் கண்காணிக்கவில்லை."

6. It is relevant to note that it is not as if that any of the petitioners as Watchman was able to detect the theft and brought it to the notice of the second respondent. On the other hand, they simply took the stand that nothing had happened during their duty hours, while as a matter of fact, it was found out that there was an open robbery that had taken place by house breaking into the premises by breaking open the jolly works with a large hammer, one of the doors as well as the almirah, all of them, were broken open with the aid of the large hammer (rk;kl;o). Therefore, it was too tall a story of the petitioners to believe that nothing had happened during their duty hours. Either the petitioners irrespective of the noise heard by them were not inclined to prevent the theft or they themselves were party to the incident. In such circumstances, the ultimate conclusion of the second respondent in having found that the petitioners were guilty and responsible for the theft as well as the loss incurred by the second respondent-Institute, cannot be found fault with.

7. In fact, for the utter disregard displayed in the performance of duties by the petitioners, they deserve the extreme punishment of dismissal. We feel that the second respondent was lenient in the imposition of punishment by merely passing a specific order for recovery of the loss, that too, in easy instalments of Rs.820/-. In spite of such a grave misconduct committed by the petitioners, lenient punishment was imposed by ordering only recovery of the total loss in 30 monthly instalments, in equal proportion by all the petitioners.

8. Learned counsel for the petitioners states that the first and sixth petitioners had retired from the service and the third petitioner is no more. Learned counsel also states that recovery had been effected to

the full extent. Though learned counsel for the petitioners contends that there were seven watchmen altogether, and that the seventh person was let off without any action being taken against him, we are not persuaded by the said submission, inasmuch as exoneration of the seventh person alone would not mitigate the seriousness of the misconduct alleged against the petitioners or that, that by itself would result in exoneration of the petitioners from the charges which were amply proved against the petitioners.

9. Looked at from any angle, we do not find any scope to interfere with the order of the second respondent dated 16.11.1999 and the confirmation of the same by the third respondent-Tribunal in its order dated 4.4.2000 passed in O.A.No.1367 of 2000.

10. In the above context, it will be worthwhile to refer to the decision of His Lordship Justice Sri Balakrishna Ayyar, reported in 1959 (II) LLJ 619 (Royal Printing Works vs. Industrial Tribunal and another), which was also confirmed by a Division Bench of this Court in the decision reported in 1963 (II) LLJ 60 (Royal Printing Works vs. Industrial Tribunal). In the decision reported in 1959 (II) LLJ 619 (cited supra), Sri Balakrishna Ayyar, J has stated how in such circumstances, any misplaced sympathy would result in serious inroads into the discipline of an organisation, in the following words in the penultimate paragraph of the judgment:

"There are certain passages in the order of the tribunal which as I understand them suggest that carelessness on the part of an employee in relation to his work would not justify serious punishment. With this view I definitely disagree. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. I shall not refer to the classic example of the sentry who sleeps at his post and allows the enemy to slip through. There are other more familiar instances. A compositor who carelessly places a plus sign instead of a minus sign in a question paper may cause numerous examinees to fail. A compounder in a hospital or chemists' shop who makes up the mixtures or other medicines carelessly may cause quite a few deaths. The man at an airport who does not carefully filter the petrol poured into a plane may cause it to crash. The railway employee who does not set the point carefully may cause a head-on collision. Misplaced sympathy can be a great evil. Carelessness and indifference to duty are not the high roads to individual or national prosperity." (emphasis supplied by us)

11. Applying the above said principle, we are of the view that the petitioners do not deserve any sympathy in the matter of punishment as

ordered by the second respondent. There is therefore no merits in this Writ Petition. The Writ Petition fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

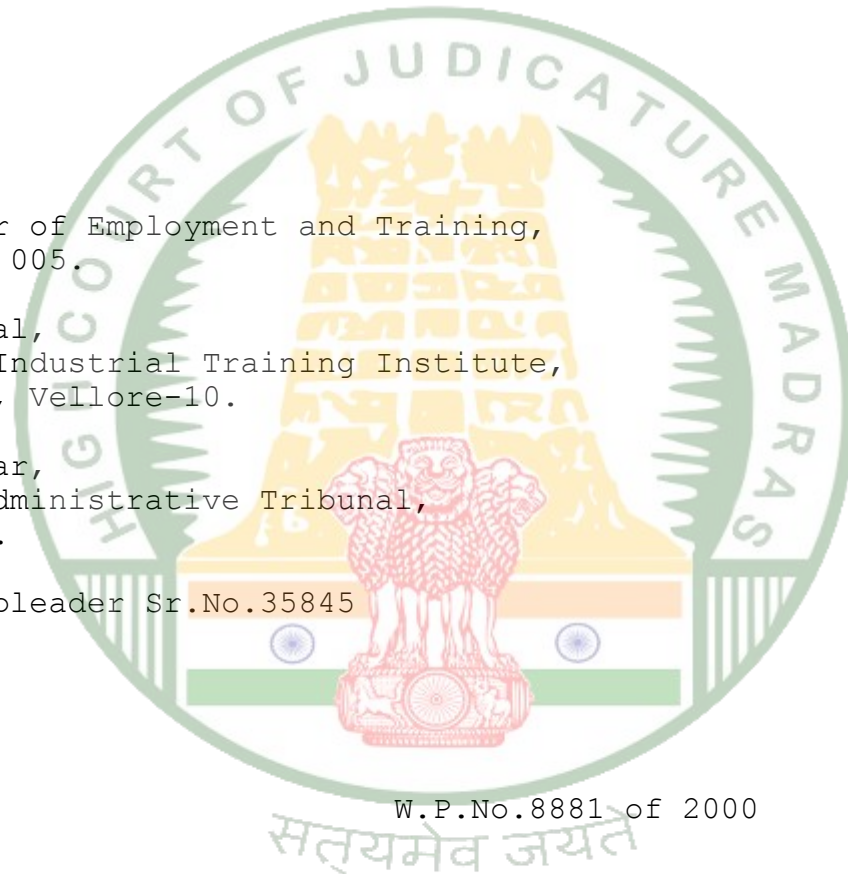
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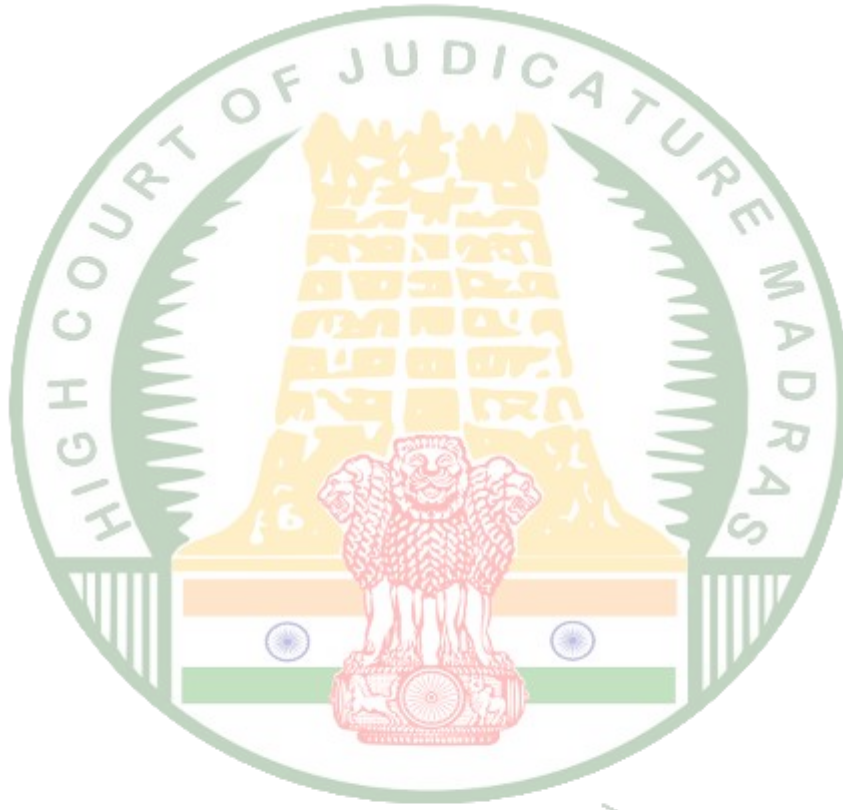
1 cc to Govt. pleader Sr.No.35845

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